



GOVERNOR OF MISSOURI

JEFFERSON CITY

65102

JEREMIAH W. (JAY) NIXON
GOVERNOR

P.O. Box 720
(573) 751-3222

May 8, 2015

TO THE CHIEF CLERK OF THE
HOUSE OF REPRESENTATIVES
98th GENERAL ASSEMBLY
FIRST REGULAR SESSION
STATE OF MISSOURI

Herewith I return to you Conference Committee Substitute for Senate Committee Substitute for House Committee Substitute for House Bill No. 2 entitled:

AN ACT

To appropriate money for the expenses, grants, refunds, and distributions of the State Board of Education and the Department of Elementary and Secondary Education, and the several divisions and programs thereof to be expended only as provided in Article IV, Section 28 of the Constitution of Missouri, and to transfer money among certain funds for the period beginning July 1, 2015 and ending June 30, 2016; provided that no funds from these sections shall be expended for the purpose of costs associated with the travel or staffing of the offices of the Governor, Lieutenant Governor, Secretary of State, State Auditor, State Treasurer, or Attorney General, and further provided that no funds from these sections shall be expended for the purpose of aerial travel within the state of Missouri.

On May 8, 2015, I approved Conference Committee Substitute for Senate Committee Substitute for House Committee Substitute for House Bill No. 2. However, section 2.070 of Conference Committee Substitute for Senate Committee Substitute for House Committee Substitute for House Bill No. 2 contains language that is inconsistent with existing law relating to the state's education assessment plan. The legislature may not create new and different mandates or amend current legal requirements through the appropriations process. It is well-settled that "to inject general legislation of any sort into an appropriation act is repugnant to the constitution." See *State ex rel. Hueller v. Thompson*, 289 S.W. 338, 340 (Mo. banc 1926). Indeed, "[a]ppropriations of money for payment of state obligations and the amendment of a general statute are entirely different and separate subjects for legislative action." *Igoe v. Bradford*, 611 S.W.2d 343, 350 (Mo.App. 1980). To the extent section 2.070 of Conference Committee

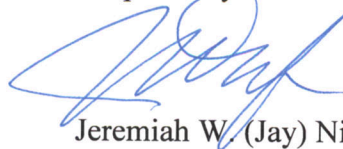
Substitute for Senate Committee Substitute for House Committee Substitute for House Bill No. 2 attempts to legislate through the appropriations process in violation of the single-subject requirement of Article III, Section 23 of the Missouri Constitution, existing substantive law must prevail.

Section 2.070 seeks to require “that no later than February 1, 2016 the Department of Elementary and Secondary Education shall submit a plan for the development and implementation of a new, Missouri-based state assessment plan for review and approval by the House Budget Committee and Senate Appropriations Committee...” Existing state law does not mandate the development of a new state assessment plan by a date certain, and the legislature may not seek to impose such a requirement through an appropriations bill. Moreover, the attempt to extend approval authority of a new state assessment plan to the House Budget Committee and Senate Appropriations Committee is similarly flawed due to its conflict with current law. Section 160.526.2, RSMo, provides a process by which the entire General Assembly can veto implementation, modification, or revision to the state assessment plan by concurrent resolution adopted by majority vote of both chambers. This duly enacted statute cannot be altered, amended or affected by a phrase inserted into an appropriations bill. If a new state assessment plan is proposed, the State Board of Education and the Department of Elementary and Secondary Education will comply with the process set forth in Missouri statutes.

Section 2.070 of Conference Committee Substitute for Senate Committee Substitute for House Committee Substitute for House Bill No. 2 further states “that no funds from this section shall be used for assessments which generate results used to lower a public school district’s accreditation or a teacher’s evaluation.” This language broadly prohibits, without limitation, the use of assessment results to lower a district’s accreditation or in a teacher’s evaluation. By contrast, section 161.855.4, RSMo, - enacted only last year - limits the use of such results in the accreditation of districts and in the evaluation of teachers only in the *first* year a new or changed statewide assessment system is utilized. The inconsistency between the substantive law and the language in the appropriations bill must be resolved in favor of the substantive law. The impact of assessment results on a school district’s accreditation or in a teacher’s evaluation will be guided by section 161.855.4, RSMo.

The aforementioned language contained in section 2.070 of Conference Committee Substitute for Senate Committee Substitute for House Committee Substitute for House Bill No. 2 conflicts with existing state law and thereby violates Article III, Section 23 of the Missouri Constitution. Accordingly, this language is void and unenforceable and will be viewed as legal surplusage in its implementation.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Jay Nixon", is written over the printed name.

Jeremiah W. (Jay) Nixon
Governor